

NA 04-0240-C B/H Welder-Kays v Kleinert Kutz
Judge Sarah Evans Barker

Signed on 08/26/05

NOT INTENDED FOR PUBLICATION IN PRINT

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

TAMARA WELDER-KAYS,)	
)	
Plaintiff,)	
vs.)	NO. 4:04-cv-00240-SEB-WGH
)	
KLEINERT KUTZ & ASSOCIATES HAND)	
CARE CENTER LONG TERM)	
DISABILITY PLAN,)	
THE PRUDENTIAL INSURANCE)	
COMPANY OF AMERICA,)	
DANIEL DOUGHERTY,)	
)	
Defendants.)	

UNITED STATES DISTRICT COURT
SOUTHERN DISTRICT OF INDIANA
NEW ALBANY DIVISION

TAMARA WELDER-KAYS,

Plaintiff,

vs.

KLEINERT KUTZ & ASSOCIATES HAND
CARE CENTER LONG TERM DISABILITY
PLAN, THE PRUDENTIAL INSURANCE
COMPANY OF AMERICA, and DANIEL
DOUGHERTY,
Defendant.

4::04-CV-0240 SEB WGH

**ENTRY GRANTING DEFENDANTS MOTION TO DISMISS AND DENYING
PLAINTIFF'S MOTION TO AMEND**

This matter comes before the Court on Defendant Daniel Dougherty's ("Mr. Dougherty") Motion to Dismiss all claims against him in the Complaint filed by Plaintiff Tamara Welder-Kays ("Ms. Welder-Kays") on December 16, 2004. Ms. Welder-Kays brought this action under the Federal Employee Retirement Income Security Act of 1974 ("ERISA"), 29 U.S.C. § 1001, et. seq, asserting she was improperly denied benefits under the terms of an ERISA plan, the Kleinert Kutz & Associates Hand Care Center Long Term Disability Plan (the "Plan"), in which she was a participant. Defendant Daniel Dougherty counters he is not a proper defendant in an ERISA action.

Instead of contesting Mr. Dougherty's Motion to Dismiss, Ms. Welder-Kays moved to amend her complaint by adding a claim of breach of fiduciary duty against Mr. Dougherty and the Prudential Insurance Company of America ("Prudential"). Mr. Dougherty argues the Motion to Amend should be denied because Ms. Welder-Kays cannot bring a breach of fiduciary duty

claim under ERISA. For the reasons discussed below, we GRANT Mr. Dougherty's Motion to Dismiss and DENY Ms. Welder-Kays' Motion to Amend.

Ms. Welder-Kays' original Complaint improperly included Mr. Dougherty as a defendant of her ERISA claim. As the Seventh Circuit has explained, "ERISA permits suits to recover benefits only against the Plan as an entity." Jass v. Prudential Health Care Plan, Inc., 88 F.3d 1482, 1490 (7th Cir. 1996) (internal quotation omitted); see also, 29 U.S.C. § 1132(d)(2) (providing: "Any money judgment under this subchapter against an employee benefit plan shall be enforceable only against the plan as an entity and shall not be enforceable against any other person unless liability against such person is established in his individual capacity under this subchapter"). Accordingly, we DISMISS the claims against Mr. Dougherty contained in Ms. Welder-Kays Complaint filed on December 16, 2004.

The alternative language submitted by Ms. Welder-Kays in her Amended Complaint also does not constitute a viable cause of action against Mr. Dougherty. It is well-settled law that, as a beneficiary, Ms. Welder-Kays cannot bring suit directly against Mr. Dougherty, or Prudential, for violation of a fiduciary duty related to the alleged improper denial of her benefits because ERISA does not grant a beneficiary "a cause of action for extra-contractual damages caused by improper or untimely processing of benefit claims." Massachusetts Mut. Life Ins. Co. v. Russell, 473 U.S. 134, 148 (1985). Because the amended portions of the complaint do not contain viable causes of action, we DENY Ms. Welder-Kays' Motion to Amend. See AM Intern., Inc. v. Graphic Management Associates, Inc., 44 F.3d 572, 578 (7th Cir. 1995) (holding that: "a judge should not grant a motion to amend the complaint if the grant would merely set the stage for the dismissal of the amended complaint.")

Because Ms. Welder-Kays has not pled a viable cause of action against Mr. Dougherty in

either her original Complaint filed on December 16, 2004, or in her Amended Complaint, submitted on March 15, 2005, we GRANT Defendant Dougherty's Motion to Dismiss the claims against him personally and DENY Plaintiff's Motion to Amend. IT IS SO ORDERED.

Date: _____

SARAH EVANS BARKER, JUDGE
United States District Court
Southern District of Indiana

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